

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

IN RE: FISHER-PRICE ROCK 'N PLAY
SLEEPER MARKETING, SALES
PRACTICES, AND PRODUCTS
LIABILITY LITIGATION

MDL No. 1:19-md-2903

This Document Relates to: ALL CASES

Hon. Geoffrey W. Crawford

**DEFENDANTS' COMPENDIUM OF EVIDENCE IN SUPPORT OF ITS OPPOSITION
TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION**

Defendants Fisher-Price, Inc. and Mattel, Inc. (collectively, “Defendants”) hereby respectfully submit this Compendium of Evidence in support of its Opposition to Plaintiffs’ Motion for Class Certification.

<u>EXPERT REPORTS</u>		
*Expert Report of Dr. Ran Kivetz		
*Expert Rebuttal Report of Peter Rossi, Ph.D.		
Expert Rebuttal Report of Olivier Toubia, Ph.D.		
<u>DECLARATIONS</u>		
Declaration of Adrienne E. Marshack (“Marshack Decl.”) (Exs. 1-111)		
Declaration of Sarah Ford (“Ford Decl.”) (Exs. 112-114)		
<u>EXHIBITS</u>		
Ex.	Exhibit Description	Authenticating Declaration
1	Anthony DeSimone Deposition Transcript Excerpts (“DeSimone Depo.”)	Marshack Decl. ¶ 4
2*	Sarah Ford Deposition Transcript Excerpts, Volume I (“Ford Depo.”)	Marshack Decl. ¶ 5
3*	Sarah Ford Deposition Transcript Excerpts, Volume II (“Ford Depo. Vol. II”)	Marshack Decl. ¶ 6
4*	Catherine “Kitty” Pilarz Deposition Transcript Excerpts (“Pilarz Depo.”)	Marshack Decl. ¶ 7
5*	Chuck Scothon Deposition Transcript Excerpts (“Scothon Depo.”)	Marshack Decl. ¶ 8
6*	Deirdre Stephens Deposition Transcript Excerpts (“Stephens Depo.”)	Marshack Decl. ¶ 9
7*	Elizabeth Alfaro Deposition Transcript Excerpts (“Alfaro”)	Marshack Decl. ¶ 10
8*	Emily Barton Deposition Transcript Excerpts (“Barton”)	Marshack Decl. ¶ 11
9*	Linda Black Deposition Transcript Excerpts (“Black”)	Marshack Decl. ¶ 12
10*	Luke Cuddy Deposition Transcript Excerpts (“Cuddy”)	Marshack Decl. ¶ 13
11*	Rebecca Drover Deposition Transcript Excerpts (“Drover”)	Marshack Decl. ¶ 14
12*	Megan Fieker Deposition Transcript Excerpts (“Fieker”)	Marshack Decl. ¶ 15
13*	Karen Flores Deposition Transcript Excerpts (“Flores”)	Marshack Decl. ¶ 16
14*	Nancy Hanson Deposition Transcript Excerpts (“Hanson”)	Marshack Decl. ¶ 17

Ex.	Exhibit Description	Authenticating Declaration
15*	Jena Huey Deposition Transcript Excerpts, Volumes 1 and 2 (“Huey”)	Marshack Decl. ¶ 18
16*	Samantha Jacoby Deposition Transcript Excerpts (“Jacoby”)	Marshack Decl. ¶ 19
17*	Megan Kaden Deposition Transcript Excerpts, Volumes 1, 2, and 3 (“Kaden”)	Marshack Decl. ¶ 20
18*	Kerry Mandley Deposition Transcript Excerpts (“Mandley”)	Marshack Decl. ¶ 21
19*	Cassandra Mulvey Deposition Transcript Excerpts (“Mulvey”)	Marshack Decl. ¶ 22
20*	Joshua Nadel Deposition Transcript Excerpts (“Nadel”)	Marshack Decl. ¶ 23
21*	Melanie Nowlin Deposition Transcript Excerpts (“Nowlin”)	Marshack Decl. ¶ 24
22	Daniel Pasternacki Deposition Transcript Excerpts (“Pasternacki”)	Marshack Decl. ¶ 25
23*	Jessie Poppe Deposition Transcript Excerpts (“Poppe”)	Marshack Decl. ¶ 26
24*	Katherine Shaffer Deposition Transcript Excerpts (“Shaffer”)	Marshack Decl. ¶ 27
25*	Emily Simmonds Deposition Transcript Excerpts (“Simmonds”)	Marshack Decl. ¶ 28
26*	Josie Willis Deposition Transcript Excerpts (“Willis”)	Marshack Decl. ¶ 29
27*	Renee Wray Deposition Transcript Excerpts (“Wray”)	Marshack Decl. ¶ 30
28	Colin Weir Deposition Transcript Excerpts (“Weir”)	Marshack Decl. ¶ 31
29	Plaintiffs’ Deposition Exhibit 4 (FSHR0011663-11664)	Marshack Decl. ¶ 33
30	Plaintiffs’ Deposition Exhibit 6 (FSHR0005241, FSHR0005282, FSHR0005250, FSHR0005258)	Marshack Decl. ¶ 34
31*	Plaintiffs’ Deposition Exhibit 11 (FSHR0004127-4149)	Marshack Decl. ¶ 35
32*	Plaintiffs’ Deposition Exhibit 13 (FSHR0049280-49286)	Marshack Decl. ¶ 36
33*	Plaintiffs’ Deposition Exhibit 9 (FSHR0003862-3864)	Marshack Decl. ¶ 37
34*	Plaintiffs’ Deposition Exhibit 17 (FSHR0028358-28360, FSHR0028720-28724)	Marshack Decl. ¶ 38
35*	Plaintiffs’ Deposition Exhibit 19 (FSHR0024684-24691)	Marshack Decl. ¶ 39
36*	Plaintiffs’ Deposition Exhibit 22 (FSHR0047936-47937)	Marshack Decl. ¶ 40
37	Plaintiffs’ Deposition Exhibit 25 (FSHR0064165-64176)	Marshack Decl. ¶ 41
38*	Plaintiffs’ Deposition Exhibit 53 (FSHR0001277)	Marshack Decl. ¶ 42
39	Plaintiffs’ Deposition Exhibit 60 (FSHR0005658, FSHR0005664, FSHR0005667, FSHR0005673, FSHR0005679)	Marshack Decl. ¶ 43
40	Plaintiffs’ Deposition Exhibit 66 (FSHR0011934)	Marshack Decl. ¶ 44
41*	Plaintiffs’ Deposition Exhibit 67 (FSHR0061936-61968)	Marshack Decl. ¶ 45
42*	Plaintiffs’ Deposition Exhibit 68 (FSHR0058028-58029)	Marshack Decl. ¶ 46
43*	Plaintiffs’ Deposition Exhibit 81 (FSHR0048655-48675)	Marshack Decl. ¶ 47

Ex.	Exhibit Description	Authenticating Declaration
44	Plaintiffs' Deposition Exhibit 82	Marshack Decl. ¶ 48
45*	Plaintiffs' Deposition Exhibit 84 (FSHR0028720-28724)	Marshack Decl. ¶ 49
46	Defendants' Deposition Exhibit 12 (Willis00000001-03)	Marshack Decl. ¶ 50
47*	Defendants' Deposition Exhibit 15 (Willis00000004-05)	Marshack Decl. ¶ 51
48	Defendants' Deposition Exhibit 25 (Poppe00000004)	Marshack Decl. ¶ 52
49	Defendants' Deposition Exhibit 25-A	Marshack Decl. ¶ 53
50*	Defendants' Deposition Exhibit 34 (Cuddy00000001)	Marshack Decl. ¶ 54
51	Defendants' Deposition Exhibit 38	Marshack Decl. ¶ 55
52*	Defendants' Deposition Exhibit 40 (Shaffer00000001)	Marshack Decl. ¶ 56
53	Defendants' Deposition Exhibit 52 (Fieker00000001-02)	Marshack Decl. ¶ 57
54*	Defendants' Deposition Exhibit 69 (Flores00000001)	Marshack Decl. ¶ 58
55*	Defendants' Deposition Exhibit 70 (Flores00000022-25)	Marshack Decl. ¶ 59
56	Defendants' Deposition Exhibit 71 (Flores00000026)	Marshack Decl. ¶ 60
57*	Defendants' Deposition Exhibit 90 (Flores00000028-29)	Marshack Decl. ¶ 61
58*	Defendants' Deposition Exhibit 94 (Pasternacki00000001-02)	Marshack Decl. ¶ 62
59*	Defendants' Deposition Exhibit 95 (Pasternacki00000048-54)	Marshack Decl. ¶ 63
60	Defendants' Deposition Exhibit 100 (Pasternacki00000005-21)	Marshack Decl. ¶ 64
61*	Defendants' Deposition Exhibit 101 (Pasternacki00000003)	Marshack Decl. ¶ 65
62*	Defendants' Deposition Exhibit 105 (Alfaro00000001)	Marshack Decl. ¶ 66
63	Defendants' Deposition Exhibit 108	Marshack Decl. ¶ 67
64*	Defendants' Deposition Exhibit 110 (Jacoby00000001-02)	Marshack Decl. ¶ 68
65*	Defendants' Deposition Exhibit 111 (Jacoby00000005-06)	Marshack Decl. ¶ 69
66	Defendants' Deposition Exhibit 114	Marshack Decl. ¶ 70
67*	Defendants' Deposition Exhibit 118 (Jacoby00000003-04)	Marshack Decl. ¶ 71
68*	Defendants' Deposition Exhibit 124 (Drover00000001-03)	Marshack Decl. ¶ 72
69*	Defendants' Deposition Exhibit 128 (Simmonds00000007-10)	Marshack Decl. ¶ 73
70*	Defendants' Deposition Exhibit 129 (Simmonds00000015)	Marshack Decl. ¶ 74
71*	Defendants' Deposition Exhibit 130 (Simmonds00000001)	Marshack Decl. ¶ 75
72*	Defendants' Deposition Exhibit 140 (Barton00000002)	Marshack Decl. ¶ 76
73*	Defendants' Deposition Exhibit 152 (Kaden00000001-02)	Marshack Decl. ¶ 77
74*	Defendants' Deposition Exhibit 157 (Huey00000001)	Marshack Decl. ¶ 78
75*	Defendants' Deposition Exhibit 158	Marshack Decl. ¶ 79
76*	Defendants' Deposition Exhibit 159	Marshack Decl. ¶ 80

Ex.	Exhibit Description	Authenticating Declaration
77	Defendants' Deposition Exhibit 164	Marshack Decl. ¶ 81
78	Defendants' Deposition Exhibit 168	Marshack Decl. ¶ 82
79*	"Premium Baby Gear Segmentation – Topline Insights from Phase 1 Qualitative" (December 18, 2018) (FSHR0017737-17747)	Marshack Decl. ¶ 160
80	Mintel – Baby Durables US Survey (April 2016)	Marshack Decl. ¶ 161
81	Docket from <i>Patton v. Topps Meat Co., LLC</i> , No. 07-CV-00654(S)(M), 2010 WL 9432381, *8 (W.D.N.Y. May 27, 2010) (" <i>Patton</i> ")	Marshack Decl. ¶ 162
82	Blog Post: "A Busy Mommy – My Baby Slept" http://abusymommy.com/2010/02/my-baby-slept-fisher-price-rock-n-play-sleeper-review/ ("My Baby Slept")	Marshack Decl. ¶ 146
83	Blog Post: "Beauty, Baby, and a Budget" http://www.whitjoxo.com/2017/02/07/my-favorite-products-for-new-moms/ ("Beauty, Baby, and Budget")	Marshack Decl. ¶ 146
84	Blog Post: "Being Mrs. Beer – Life. Love. Parenting" https://www.beingmrsbeer.com/mom-baby-must-haves-babbleboxx/ ("Being Mrs. Beer")	Marshack Decl. ¶ 146
85	Blog Post: "Chit Chat Mom – Travel. Entertainment. Parenting and Much More!" https://www.chitchatmom.com/2017/01/the-best-products-for-new-moms.html ("Chit Chat Mom")	Marshack Decl. ¶ 146
86	Blog Post: "Clarks Condensed" https://www.clarkscondensed.com/products-i-wish-i-had-with-first-baby/ ("Clarks Condensed")	Marshack Decl. ¶ 146
87	Blog Post: "Fresh Mommy Blog x Tabitha Blue" https://freshmommyblog.com/babbleboxx-unboxing/ ("Fresh Mommy Blog")	Marshack Decl. ¶ 146
88	Blog Post: "GenPink – Gen Y gals sharing their lives about travel, fitness, family, events and more" https://www.genpink.com/babybabbleboxx/ ("GenPink")	Marshack Decl. ¶ 146
89	Blog Post: "Grrfeisty" https://grrfeisty.com/2017/02/adorable-gifts-for-new-mom-and-baby.html ("GrrFeisty")	Marshack Decl. ¶ 146
90	Blog Post: "It Starts with Coffee – Blog by Neely Moldovan – Lifestyle, Beauty, Motherhood, Wellness, Travel" https://www.itstartswithcoffee.com/babbleboxx-review/ ("It Starts with Coffee")	Marshack Decl. ¶ 146
91	Blog Post: "Kaylee Eylander – Recipes DIY Baby Family" https://www.kayleeylander.com/DIY-tips/newborn-mommy-survival-kit-babygear-review/ ("Kaylee Eylander")	Marshack Decl. ¶ 146
92	Blog Post: "Love Inc." https://loveincmag.com/bump-baby-must-products-get-early-years/ ("Love Inc.")	Marshack Decl. ¶ 146

Ex.	Exhibit Description	Authenticating Declaration
93	Blog Post: “Malory Anne – Reason to Anchor” http://www.maloryanne.com/2017/02/the-best-mom-baby-essentials.html (“Malory Anne”)	Marshack Decl. ¶ 146
94	Blog Post: “Mama Knows It All” https://mamaknowsital.com/best-baby-products/ (“Mama Knows It All”)	Marshack Decl. ¶ 146
95	Blog Post: “Much Most Darling – Realistic, Sustainable & Vegan Motherhood Through the Eyes of a Boy Mom” https://www.muchmostdarling.com/2017/02/4th-trimester-favorites-baby-toddler-mom.html (“Much Most Darling”)	Marshack Decl. ¶ 146
96	Blog Post: “Must Have Mom – Having It All and Showing You How” (“Must Have Mom”)	Marshack Decl. ¶ 146
97	Blog Post: “My Life As A Southern Mother” http://www.asouthernmother.com/2017/02/great-baby-shower-gifts-for-every-budget.html (“Southern Mom”)	Marshack Decl. ¶ 146
98	Blog Post: “Nashville Wifetypes” https://nashvillewifetypes.com/best-gift-ideas-new-mom-coming-lady-just-baby/ (“Nashville Wifetypes”)	Marshack Decl. ¶ 146
99	Blog Post: “New Age Mama – Reviews & Giveaways” http://newagemama.blogspot.com/2010/02/fisher-price-rock-n-play-sleeper-review.html (“New Age Mama”)	Marshack Decl. ¶ 146
100	Blog Post: “Paperclips & Pacis – Balancing Business & Family” http://www.lindsaytampabay.com/fisher-price-my-little-snuggabunny-rock-n-play-sleeper/ (“Paperclips & Pacis”)	Marshack Decl. ¶ 146
101	Blog Post: “Pulling Curls – Pregnancy & Home Life Untangled” https://www.pullingcurls.com/new-baby-needs-vs-wants/ (“Pulling Curls”)	Marshack Decl. ¶ 146
102	Blog Post: “Shop Girl Daily” https://www.shopgirldaily.com/the-best-brands-new-moms-need-to-know/ (“Shop Girl Daily”)	Marshack Decl. ¶ 146
103	Blog Post: “The Tip Toe Fairy” https://thetiptofairy.com/must-haves-goodies-for-the-new-mom-from-babbleboxx/ (“Tip Toe Fairy”)	Marshack Decl. ¶ 146
104	December 9, 2019 Status Conference Transcript	Marshack Decl. ¶ 163
105	Defendants’ Deposition Exhibit 33 (Cuddy Complaint)	Marshack Decl. ¶ 83
106	Defendants’ Deposition Exhibit 77 (Mandley00000001-10)	Marshack Decl. ¶ 84
107	Defendants’ Deposition Exhibit 26-A	Marshack Decl. ¶ 85
108	Defendants’ Deposition Exhibit 26-B	Marshack Decl. ¶ 86
109	Defendants’ Deposition Exhibit 41	Marshack Decl. ¶ 87
110	Defendants’ Deposition Exhibit 53	Marshack Decl. ¶ 88
111	Defendants’ Deposition Exhibit 57	Marshack Decl. ¶ 89

Ex.	Exhibit Description	Authenticating Declaration
112	Examples of Rock 'n Play Sleeper Packaging	Ford Decl. ¶ 28
113*	Advertising Spend Spreadsheet (FSHR0012775)	Ford Decl. ¶ 31
114	Examples of Rock 'n Play Sleeper Point-of-Purchase Cards	Ford Decl. ¶ 34

* = Filed Conditionally Under Seal (or portions thereof)

Dated: June 16, 2021

Respectfully submitted,

By: /s/ Adrienne E. Marshack

Adrienne E. Marshack

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